IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
v.	:	
CARLOS MARTINEZ SANTIAGO	:	NO. 05-368

MEMORANDUM

Baylson, J. **April 27, 2006**

Defendant was convicted by a jury of two counts of armed bank robbery and two counts of using a firearm during and in relation to a crime of violence. After a bifurcated trial and separate verdict, Defendant was also convicted of being a felon in possession of a firearm. Currently before the Court is Defendant's Motion for Acquittal or for a New Trial as to Counts I, II, III and IV of the indictment, pursuant to Federal Rules of Criminal Procedure 29 and 33 (Doc. No. 47). For the following reasons, the Court will grant the motion in part and deny the motion in part.

I. Factual and Procedural Background

Defendant was arrested on September 14, 2004, upon being identified as the person who robbed the Fulton Bank in Lancaster, Pennsylvania a few minutes before the arrest.

During the trial, an exhibit – marked as Defense Exhibit 1 – was introduced into evidence by defense counsel. Defense Exhibit 1 was a newspaper article dated September 15, 2004 from a Lancaster newspaper that detailed Defendant's arrest and displayed a picture of Defendant being held by several police officers. Defendant had introduced this article, presumably, because it

assisted the defense with regard to the identification issue (which had been the focal point of a pre-trial motion to suppress). Although not noticed at trial by the prosecutor, defense counsel, or the undersigned, the newspaper article contained a paragraph toward the end that stated as follows:

> Santiago was prohibited from carrying a gun after pleading guilty in 1997 to aggravated assault and robbery.

The sole ground for Defendant's Motion is that the admission of this newspaper article into evidence was prejudicial and requires a new trial.

The matter came to light during the bifurcated proceeding on the felony possession charge. At that time, the jury had heard evidence of the Defendant's prior conviction (indeed, the bifurcated trial was limited to that evidence). The jury then sent a note to the Court, which the Court reviewed with counsel prior to discussing it with the jury in open court. The jury's note stated:

> We want to inform the Court that the jury has prior knowledge of the Defendant's previous conviction. This information is contained in defense Exhibit No. 1.
>
> We affirm that we were in no way influenced in our previous verdicts by this information; however, what, if any, is the impact of this relative to Count 5?

After consulting with counsel, the Court advised the jury that the referenced information was not relevant and that the jury should merely consider the evidence as to the charge of felony possession of a firearm and return a verdict. Shortly thereafter, the jury found Defendant guilty being a felon in possession of a gun. Prior to discharging the jury, the Court advised the jury that, as a result of the note indicating that the jury had knowledge of Defendant's prior record

while deliberating on the first four counts of the indictment, the Court would inquire of each juror – individually, in open court, and out of the presence of the other jurors – whether that knowledge had in any way influenced the verdict. See Government of the Virgin Islands v. Dowling, 814 F.2d 134 (3d Cir. 1987) (recognizing that voir dire is an appropriate method for inquiry into possible prejudice or bias on the part of jurors, so long as that procedure provides a reasonable assurance for the discovery of prejudice) (citing United States v. Salamone, 800 F.2d 1216, 1226 (3d Cir. 1986)).

In response to the Court's interrogation of each of the jurors, separately, and out of the hearing of others jurors, each juror responded that their verdict had not in any way been influenced by knowledge of Defendant's prior conviction as referenced in the newspaper article.

Defendant has moved for a new trial asserting that evidence of a prior conviction is necessarily so prejudicial so as to require a new trial. In response, the government contends that (1) the test for prejudice is a flexible one, and (2) in this case, the Court's voir dire of the jurors, immediately after they had rendered the verdict on Count V and prior to their discharge, established that there was no prejudice.

II. Discussion

A criminal defendant is entitled to a determination of his or her guilt by an unbiased jury based solely upon evidence properly admitted against him or her in court. Dowling, 814 F.2d at 138. Evidence of prior convictions may create the impression of a predisposition to criminal activity. United States v. De Larosa, 450 F.2d 1057, 1073 (3d Cir. 1971). Such information therefore carries great potential for prejudicing the jury. Dowling, 814 F.2d at 138. Courts have, therefore, long considered evidence of a criminal defendant's involvement in other crimes to be

intrinsically inadmissible as highly prejudicial information about a collateral matter not connected with the offense charged. See, e.g., United States v. Jacangelo, 281 F.2d 574, 576-577 (1960) (citing Brown v. United States, 83 F.2d 383 (3d Cir. 1936)). To inform the jury of prior crimes of a defendant is, in the view of the United States Supreme Court, often so improper and so prejudicial that a mistrial must be declared, even when the jurors assert that they can and will disregard that information. See Marshall v. United States, 360 U.S. 310 (1959). Moreover, the "prejudice to the defendant is almost certain to be as great when [ ] evidence [of a prior conviction] reaches the jury through news accounts as when it is a part of the prosecution's evidence." Id. at 312-13.

Not every case in which the jury has improperly received inadmissible evidence requires a new trial. Youngblood, 56 F. Supp. 2d at 522 (citing United States v. DiSalvo, 34 F.3d 1204, 1223 (3d Cir. 1994)). "[E]ach case must turn on its special facts," Marshall, 360 U.S. at 312, and the likelihood of substantial prejudice "turns on all of the surrounding circumstances." Dowling, 814 F.2d at 138. The trial court's inquiry and subsequent findings are ones of "historical fact: did a juror swear that he could set aside any opinion he might hold and decide the case on the evidence, and should the juror's protestation of impartiality have been believed." Dowling, 814 F.3d 139 (citing Patton v. Yount, 467 U.S. 1025, 1036 (1984)).[1]

A new trial is necessary unless the Court, based on the results of its case-specific inquiry, finds that it is "highly probable that the error did not contribute to the judgment" of the jury.

[1] Where evidence of a prior conviction has come to the attention of the jury and a court employs voir dire to determine whether the members of the jury have been prejudiced, the trial judge has "large discretion" to assess the level of prejudice. United States v. Armocida, 515 F.2d 29, 48-49 (3d Cir. 1975).

United States v. Youngblood, 56 F. Supp. 2d 518, 523 (E.D. Pa. 1999) (citing Government of the Virgin Islands v. Toto, 529 F.2d 278, 284 (3d Cir. 1976)). This standard is met when the Court possesses a "sure conviction" that the error did not prejudice the defendant. Id. (citing United States v. Mastrangelo, 172 F.3d 288, 297 (3d Cir. 1999)). Stated differently, a new trial should be ordered only when the Court concludes that "substantial prejudice" did indeed occur. Id. (citing United States v. D'Andrea, 495 F.2d at 1172 n.5; United States ex rel. Doggett v. Yeager, 472 F.2d 229, 239 (3d Cir. 1973)).

A. The Fulton Bank Robbery

Defendant's convictions on Counts III and IV were based upon the bank robbery at Fulton Bank on September 14, 2004. As to this charge, the Court finds that the evidence was unequivocal and simply overwhelming. Multiple witnesses – including the victim teller and several other people inside the bank – positively identified the Defendant, without any contradiction, as the bank robber. In addition, (1) Defendant was arrested within minutes of the Fulton Bank robbery in close proximity to Fulton Bank; (2) when Defendant was arrested, he was wearing the same clothing as the witnesses had described to the police; (3) Defendant was confronted by multiple witnesses who identified him, on the street corner, immediately after he was arrested; and (4) Defendant was found in possession of a gun similar to the one used at the bank robbery. Finally, at the time of arrest, Defendant actually confessed to the police. The Court thus finds that there was clear evidence beyond any reasonable doubt as to the Defendant's guilt with respect to the Fulton Bank robbery.

Although the Court is mindful of the well-founded concerns about the prejudicial effect of irrelevant evidence of prior convictions, the full body of evidence before the jury regarding the

Fulton Bank robbery makes it obvious to the Court that the "juror's protestation of impartiality [should be] believed." Dowling, 814 F.3d 139. When each juror's answers to the Court's voir dire are viewed in addition to the overwhelming evidence of guilt, the Court finds, within its substantial discretion, that Defendant did not suffer "substantial prejudice" as a result of the jury's exposure to the newspaper article's reference to a prior conviction. The Court has no difficulty concluding that it is "highly probable" that the evidence contained in the newspaper article at issue did not prejudice the jury. Stated differently, due to the clear and abundant evidence of guilt, the Court has a "sure conviction" that Defendant was not prejudiced by introduction of the newspaper article.

Defendant is therefore not entitled to a new trial concerning the Fulton Bank robbery, and the Court will not disturb the jury's verdict as to Counts III and IV.

B. The Waypoint Bank Robbery

Defendant's convictions on Counts I and II were based upon the bank robbery at Waypoint Bank on September 10, 2004. Compared with the evidence concerning the Fulton Bank robbery, the evidence regarding the Waypoint Bank robbery was significantly less convincing. There was only one teller who identified Defendant, and that identification occurred under somewhat suggestive conditions (as detailed in the Court's Memorandum, dated January 25, 2006, denying a motion to suppress identification).[2] Beyond the identification, there was a decided lack of other evidence against Defendant as to the Waypoint Bank robbery.

Where the case against Defendant is weak, the Court must be even more sensitive to

[2] Although the Court found that the identification procedure was not unconstitutionally suggestive, the Court now properly considers the relative weakness of that identification in evaluating the strength of the case against Defendant concerning the Waypoint Bank robbery.

concerns about jury prejudice. Indeed, it is precisely in a situation such as this – where corroborating evidence is clearly lacking – that jurors are perhaps most susceptible to the prejudicial influence of irrelevant evidence of prior convictions. The Court finds that the substantially weaker body of evidence put before the jury concerning the Waypoint Bank robbery militates against a finding that the prejudicial information in the newspaper article had no effect, notwithstanding the voir dire, with regard to the Waypoint Bank robbery charges. In the context of the notably weaker evidence of guilt pertaining to the Waypoint Bank robbery, the Court finds, within its discretion, that Defendant suffered "substantial prejudice" as a result of the jury's exposure to the newspaper article's reference to a prior conviction. Based on these circumstances, the Court cannot say that it is "highly probable" that the evidence contained in the newspaper article did not prejudice the jury as to the Waypoint Bank robbery charges. As such, the Court concludes that the introduction of the evidence contained in the newspaper article negatively impacted the Defendant's right to a fair and impartial trial on Counts I and II. See, e.g., Dowling, 814 F.2d at 138; United States v. Gray, 468 F.2d 257, 260 (3d Cir. 1972); United States v. Carney, 461 F.2d 465, 468 (3d Cir. 1972); United States v. Clarke, 343 F.2d 90 (3d Cir. 1965).

The Court will therefore grant a new trial to Defendant as to the charges concerning the Waypoint Bank robbery.

C. Count V – Felon in Possession

Defendant has not moved for a new trial as to Count V, being a felon in possession of a firearm on September 14, 2004, relating to the Fulton Bank robbery. That conviction was based on a joint stipulation, and the Court finds no need to disturb the jury's guilty verdict.

IV. Conclusion

For the reasons set forth supra, the Court will grant Defendant's Motion for a New Trial as to Counts I and II (concerning the Waypoint Bank robbery), and deny the motion as to Counts III and IV (concerning the Fulton Bank robbery). The Court will order a new trial solely as to Counts I and II.

An appropriate Order follows.

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ORDER

AND NOW, this 27th day of April, 2006, it is hereby ORDERED that Defendant's Motion For Acquittal or a New Trial (Doc. No. 47) is GRANTED in part and DENIED in part in accordance with the Court's Memorandum. The Court will impose sentences for Counts III, IV and V before conducting a new trial as to Counts I and II.

BY THE COURT:

/s/ MICHAEL M. BAYLSON
Michael M. Baylson, U.S.D.J.

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